INSPECTOR-GENERAL OF POLICE & ORS.

v.

TEOI GUAT MENG & ORS. & ANOTHER CASE

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[CRIMINAL APPLICATION NOS. 54-9-89; 44-3-90; 44-5-90; 44-7-90; 44-9-90; 44-13-90; 44-15-90; 44-17-90; 44-19-90; 44-21-90; 44-23-90; 44-39-90; 44-37-90; 44-1-90; 44-11-90; 44-25-90; 44- 27-90; 44-29-90; 44-35-90]
24 MARCH 1990

ADMINISTRATIVE LAW: *Writ of Habeas Corpus - Applicant detained for (2) years - Detention order dated 16 December 1988 - Period of detention to commence from 18 December 1986 - Detention order invalid - On 14 December 1988 detention extended for 2 years subsequently on 17 January 1990 extension of the detention order revoked and a fresh order issued power to make a fresh order or fresh direction under s. 11B(2) of the Dangerous Drugs (Special Preventive Measures) Act 1985.*

The applicant was detained for 2 years from 18 December 1986 at the Pusat Pemulihan Akhlak, Muar, Johore. The detention order was dated 16 December 1988. On the authority of a Supreme Court decision, the detention order was invalid.

On 14 December 1988, prior to the decision of the Supreme Court, the Deputy Minister directed that the detention be extended for a further 2 years.

The Supreme Court's decision was given on 25 November 1989. On 17 January 1990 the Deputy Minister purportedly revoked the direction for the extension of the detention and issued a fresh order.

In applying for a writ of *habeas corpus*, the applicant put forward 3 points. But main argument was whether the Minister's power to make a fresh order or fresh direction under s. 11B(2) of the Act could only arise if the original order was valid and had been revoked.

Held:

[1] Before a fresh order or direction may be made against a person by the Minister under s. 11B(2) of the Dangerous Drugs (Special Preventive Measures) Act 1985, there must have been a valid original order or a valid original direction against him which had been revoked.

[2] There was no valid detention order or valid direction extending the order, therefore the Deputy Minister could not have validly exercised the power that he purportedly exercised under s. 11B(2) of the Act.

[Applicant be set at liberty.]

Cases referred to:

Tan Hoon Seng v. Minister of Home Affairs & Anor. [1990] 1 CLJ (Rep) 271
Che Su Shafie v. Superintendent of Prisons, Pulau Jerejak, Penang [1974] 2 MLJ 194

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3, 4, 5, 6(1), (3), 7(3), 11A(1), 11B, (1), (2)

Other source referred to:

Jowitt's Dictionary of English law, 2nd Edn., Vol 2

For the respondents - Nor Bahari Baharuddin, Deputy Public Prosecutor
For the applicants no. 54-9-89 - Tan Hock Chuan; M/s. Syarikat Kam Woon Wah
For the application nos. 44-3-90, 44-5-90, 44-7-90, 44-9-90, 44-13-90, 44-15-90, 44-17-90, 44-19-90, 44-21-90, 44-23-90, 44-39-90 - Manjit Singh; M/s. Manjit Singh & Co.
For the application no. 44-37-90 - Maikal Yasu; M/s. Maikal Yasu
For the application nos. 44-1-90, 44-11-90, 44-25-90, 44-27-90, 44-29-90, 44-35-90 - Danny C. Navarednam; M/s. Danny C. Navarednam & Co.

JUDGMENT

KC Vohrah J:

There are 19 persons applying for writs of *habeas corpus* that they be released from detention. The applications were heard together and it was agreed by all parties involved that since there are common issues of law in all the applications my decision in criminal application no. 54-9-89 would apply to all the other applications.

I shall now deal with the facts of criminal application 54-9-89 which are similar to the facts of all the other application so far as they are relevant to the issues of law which are raised by them.

A detention order dated 16 December 1988 against Teoi Guat Meng was issued by the Deputy Minister of Home Affairs and it directed that he be detained at the Pusat Pemulihan Akhlak, Muar, Johore for a period of two years from 18 December 1986. The power was purportedly exercised under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) and of course on the basis of the decision of the Supreme Court in *Tan Hoon Seng v. Minister of Home Affairs and Anor.* and *Ng King Chew v. Minister of Home Affairs and Anor.*, Supreme Court criminal appeal no. 05-51-89, since the detention commenced on a date later than the date of the order, the detention was bad; in other words the detention order was invalid.

On 14 December 1988 the Deputy Minister directed that the detention of the applicant be extended for a further two years. At that time the Supreme Court had not made the decision as stated earlier.

The Supreme Court's decision was made on 25 November 1989. Authorities became aware of the invalidity of a detention order which provided for detention to commence later than the date on which the order was issued. On 17 January 1990, the Deputy Minister purportedly revoked the direction for the extension of the detention which had been made against the applicant commencing 17 December 1988. This is what the Deputy Minister states in para. 6 of his affidavit:

> In exercising the power conferred upon me under s. 11B of the Dangerous Drugs (Special Preventive Measures) Act 1985, I was satisfied that having considered in the circumstances of the case and in the interest of justice it is fit and proper for the order of detention against the applicant be revoked. Accordingly I made an order directing that the extension of detention order be revoked.

It will be noted that the Deputy Minister did not advert to the fact that the original detention order was invalid and that the direction to extend the detention order was consequently invalid. But, as is stated in para. 7 of his affidavit:

> at the same time, I was also satisfied that a fresh order should be issued against the applicant and accordingly a fresh detention order under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 was issued by me ...

The fresh order (as exhibited in the affidavit of the Deputy Minister) was issued purportedly under the power which is given under s. 6(1) read with s. 11B of the Act.

It is argued, firstly , that there is nothing in s. 11B which gives the Minister of Home Affairs power to make a fresh order of detention under s. 6.

It is argued, secondly, that if there is such a power then there would have to be fresh investigations and a fresh enquiry in accordance with the provisions of ss. 3, 4 and 5 of the Act before a fresh detention order can be issued.

The third point taken up during the course of arguments is that, assuming the Minister has power to make a fresh order or fresh direction under s. 11B(2), the power to make a fresh order or direction can only arise if the original order or direction has in the first place been revoked; and if the original order or direction is invalid then there cannot be a fresh order.

As regards the first argument with respect I cannot agree that s. 11B does not give the Minister power to make a fresh order of detention.

Section 11B reads as follows:

> 11B(1) Notwithstanding anything contained in this Act, the Minister may at any time revoke any detention order made under subsection (1) of s. 6, or any restriction order made under subsection (3) of s. 6, or any suspended detention order, or any direction under subsection (1) of s. 11A for the extension of the duration of any such order, if he deems it just or fit to do so.
>
> (2) Any revocation under subsection (1) shall be without prejudice to the validity of the order or direction before its revocation or to anything done thereunder, or to the power of the Minister to make a fresh order or to give a fresh direction as is mentioned under subsection (1) in respect of the person against whom the order or direction which is revoked was made or given.

The second limb of s. 11B(2) does give rise to some problems of interpretation. Section 11B(2) provides that any revocation under subsection (1) shall be without prejudice, *inter alia*, (and we come to the second limb of the provision):

> to the *power of the Minister* to make a fresh order or to give afresh direction *as is mentioned under subsection (1)* in respect of the person against whom the order or direction which is revoked was made or given.

All Counsel for the applicants say that the power to make a fresh order purported to be given to the Minister is in fact described to be the power mentioned in subsection (1) of s. 11B but the power given therein is merely the power of revocation and therefore there has been a failure by the Legislature to provide for the Minister to make a fresh order and the Court ought not to fill the gap and say that because the power is referred to in subsection (2) of s. 11B therefore the power must exist. With respect I do not agree there is a casus omissus in s. 11B.

Admittedly, there are infirmities in the language used in the second limb of s. 11B(2). Words to the effect that the fresh order or direction is in connection with any of the orders or direction as are mentioned in subsection (1) were left out because of less than thorough drafting. The words “as is mentioned under subsection (1)” in the second limb of subsection (2) cannot but be a reference to the three types of orders and the direction described in subsection (1) and they are the following:

(1) a detention order under s. 6;

(2) a restriction order under s. 6(3).

(3) a suspended detention order under s. 7(3);

(4) a direction under s. 11A(1).

If any one of these three orders or one direction is revoked through the use of the power under subsection (1) of s. 11B the Minister may make any of the orders or direction afresh. The word "fresh" qualifying "order" and "direction" in the second limb of subsection (2) of s. 11B is adjectival and can only relate back to any one of three orders or the direction which are described in subsection (1) of s. 11B.

Thus the power of making a fresh order or direction is not sourced in subsection (1); the power arises under the second limb of subsection (2).

It will be noticed that the power to make a fresh order or fresh direction is *"in respect of the person against whom the order or direction which is revoked was made or given"*. Reading the words which have been underlined it would mean that the fresh order or fresh direction must correspond with the original order or direction revoked; that is to say, if what is revoked, say, is a direction under s. 11A(1), then only a fresh extension order may be made, not a fresh order under s. 6(1). This point was not argued in Court but when writing this judgment I noticed this other peculiarity in the language used in the second limb of subsection (2) of s. 11B but I make no decision on the matter. Instead I would go to the third argument of Counsel for the applicant that there was nothing for the Deputy Minister to revoke in the case of the applicant Teoi as the detention order made against him was invalid and consequently the direction under s. 11A (1) to extend the detention was also invalid. If he had nothing to revoke he could not make a "fresh order" under s. 11B(2).

"Revocation" has been defined in *Jowitt's Dictionary of English law*, 2nd Edn., Vol. 2 thus:

> (lat. *revocare,* to recall) , the undoing of a thing granted, or a destroying or making void of some deed which has existence until the act of revocation made it void.

The definition is not directed at an order or direction made under statutory powers but the essence of the definition has to be looked into. Whatever state of affairs existing as a result of an act of a person empowered to do the act by some authority or other continues to exist lawfully until its existence is brought to an end by an act of revocation. If the person is not empowered to do the act bringing the state of affairs into existence, then the act that he did is unlawful and the existence of the state of affairs is unwarranted in law; the act bringing into existence the state of affairs is void and there is nothing to revoke.

Subsection (1) of s. 11B gives the Minister power to revoke the orders and direction mentioned in the subsection. If an order or a direction is in the first place invalid what is there to revoke? Here in the case of the applicant Teoi the detention order made under s. 6(1) of the Act is patently invalid. What is there to revoke?

Then again the language of the first limb of subsection (2) of s. 411B seems clear when it states:

> Any revocation under subsection (1) shall be without prejudice to the validity of the order or direction before its revocation ...

No mention is made of the revocation being without prejudice to the invalidity of the order. And the explanatory note of the bill seeking to amend s. 11B by bringing in subsection (2) states:

> The new subsection (2) preserves the validity of an order or direction before the date of its revocation.

What is preserved is the validity not the invalidity of the order.

Subsection (2) of s. 11B allows for a fresh order or fresh direction to be made "in respect of the person against whom the order or direction which is revoked was made or given". In other words before a fresh order or direction may be made against a person there must have been a valid original order or a valid original direction against him which had been revoked. With respect the case of *Che Su Shafie v. Superintendent of Prisons, Pulau Jerejak, Penang* [1974] 2 MLJ 194 cited by the Deputy Public Prosecutor has no bearing in this case. In that case the detenu had been detained under an order dated 6 August 1973 under s. 4(1) of Ordinance 5 of 1969 by the relevant Minister. The Minister then revoked the order (as the Court held he was perfectly entitled to do) and made a new order dated 21 August 1973. The validity of this new order was questioned in Court and the Court held that the second order was valid on the basis of the interpretation of some provisions of Ordinance No. 5 of 1969 which is not the law under scrutiny here. Chang Min Tat J (as he then was) found that the question whether the Minister was acting *mala fides* did not arise when he made the second order and he held that it is always open to the authorities to cure a defective order in the proceedings. Here there is no question of *mala fides* being raised too. Nor is there the question that the Minister may not make a new detention order under s. 6(1). What is strenuously argued here is that the Deputy Minister has no power as he says he has under s. 11B(2) to make a fresh order or to give a fresh direction unless in the first place he had revoked a valid order or a valid direction.

There was no valid detention order directing the detention of Teoi or valid direction extending his further detention, therefore the Deputy Minister could not have validly exercised the power that he purportedly exercised under s. 11B(2) which is predicated on a revocation of a valid order or valid direction.

In view of what I have stated above I do not think it is necessary for me to deal with the second argument of the Counsel. I order that Teoi and all applicants be set at liberty.

Also found at [1990] 1 CLJ 1140